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State v. Arrats Appellant's Brief Dckt. 45030

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45030
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-16-28121
v.	)	
	)	
JERMAINE JAMES ARRATS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

The district court sentenced Jermaine James Arrats to thirty years, with ten years fixed, for robbery. Mr. Arrats then filed an Idaho Criminal Rule 35 ("Rule 35") motion. The district court denied the motion, and Mr. Arrats appeals to this Court.

Statement of Facts and Course of Proceedings

The State charged Mr. Arrats with robbery, a felony, in violation of I.C. § 18-6501 and -6502. (R., pp.45–46.) According to the police report in the sentencing materials, Mr. Arrats forcefully removed a man from his car and drove the car away. (Presentence Investigation

Report ("PSI"),[1] pp.51–53, 55–56.) Mr. Arrats crashed the car about ten minutes later. (PSI, pp.54, 63.) At the time of the offense, Mr. Arrats was under the influence of methamphetamine. (PSI, pp.54, 57, 63, 86.) He explained that he was experiencing drug-induced psychosis. (PSI, pp.4–5.) Just prior to the offense, Mr. Arrats had fled his motel room in only his underwear and socks, fearing for his life and believing people were trying to kidnap and murder him. (PSI, pp.4–5, 63.) Indeed, he reported that he called the police twice for help the night of the crime due to his hallucinations. (PSI, pp.4–5.) As he was running away from the people he believed were trying to kill him, Mr. Arrats explained that he took the victim's car as a "fight or flight instinct." (PSI, p.5.)

Pursuant to an Idaho Criminal Rule 11 plea agreement, Mr. Arrats entered an *Alford*[2] plea to robbery. (R., pp.81–83, 72–73; *see generally* Tr. Vol. I,[3] p.5, L.1–p.27, L.4) Mr. Arrats and the State also agreed to request a sentence of thirty years, with ten years fixed, (R., p.82; Tr. Vol. I, p.5, Ls.19–22.) At sentencing, the State and Mr. Arrats's trial counsel recommended the district court impose the agreed-upon sentence. (Tr. Vol. I, p.46, Ls.4–8, p.52, L.21–p.53, L.4.) The district court followed the plea agreement, sentencing Mr. Arrats to thirty years, with ten years fixed. (R., pp.94–95, 97–99; Tr. Vol. I, p.66, Ls.7–15.)

Mr. Arrats timely appealed from the district court's judgment of conviction. (R., pp.101–02.) Less than one month later, Mr. Arrats filed a pro se Rule 35 motion. (R., pp.120–26.) He argued his sentence was illegal and the district court should reduce his sentence. (R., p.121.) The

[1] Citations to the PSI refer to the 112-page electronic document containing the confidential exhibits.
[2] *North Carolina v. Alford*, 400 U.S. 25 (1970).
[3] There are two transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing and two of three sentencing hearings. The second, cited as Volume II, contains a third sentencing hearing.

district court denied his motion. (R., pp.131–33.) Mr. Arrats filed a timely pro se notice of appeal. (R., pp.135–38.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Arrats's Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Arrats's Rule 35 Motion

Idaho Criminal Rule 35 states in relevant part:

> (a) Illegal Sentences. The court may correct a sentence that is illegal from the face of the record at any time.
>
> (b) Sentences Imposed in an Illegal Manner or Reduction of Sentence. Within 120 days of the entry of the judgment imposing sentence . . . , a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. . . . Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. A defendant may only file one motion seeking a reduction of sentence.

I.C.R. 35(a), (b). "Rule 35 is a narrow rule which allows a trial court to correct an illegal sentence or to correct a sentence imposed in an illegal manner." *State v. Colvin*, 394 P.3d 110, 111 (Ct. App. 2016) (citing *State v. Farwell*, 144 Idaho 732, 735 (2007)). "[T]he rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive." *State v. Clements*, 148 Idaho 82, 86 (2009).

Under Rule 35(a),

> the term 'illegal sentence' . . . is narrowly interpreted as a sentence that is illegal from the face of the record; *i.e.*, does not involve significant questions of fact or require an evidentiary hearing. The rule is limited to legal questions surrounding the defendant's sentence, and any factual issues must be apparent from the face of the record.

State v. Meier, 159 Idaho 712, 713 (Ct. App. 2016) (citations omitted). On the other hand, a Rule 35(b) motion "is essentially a plea for leniency, addressed to the sound discretion of the court." *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35(b) motion, the Court must "consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence." *Id.* The Court "conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest." *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). "Where an appeal is taken from an order refusing to reduce a sentence under Rule 35," the Court's scope of review "includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce." *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). "When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." *State v. Huffman*, 144 Idaho 201, 203 (2007).

Mindful of the Rule 35 motion requirements, Mr. Arrats nonetheless maintains the district court abused its discretion when it denied his Rule 35 motion. As argued by Mr. Arrats:

> (1) I presented evidence; i.e., the police report of Sgt. Madden, that I called the 911 operator for assistance from the police, because I believed my life was in danger. The Garden City Police did not make personal contact with me. By not making contact with me or coming to my aide, I was forced to act in self-defense to flee from my attackers. I perceived the threat against my life and safety to be real.
>
> When I presented evidence that the actions alleged were in self-defense (which I did), the burden then should have shifted to the State of Idaho to show "beyond a reasonable doubt" that the acts charged did not occur as an act of self-defense.
>
> 2) The Idaho Code, 19-202(A) states as follows: "No person in this State shall be placed in legal jeopardy of any kind what-so-ever for protecting himself . . . by reasonable means necessary . . .

All the witnesses, all of the victims, all of the police reports state the same fact. The defendant, wearing only his socks and underwear, approached the victim, asked for a ride, was refused this ride, and in response he took the vehicle of the victim.

The victim makes a more clear statement. He states that the defendant ran up to his vehicle, hit the window, demanded that the victim assist him in "getting out of here by giving him a ride." The victim refused to do so.

Once more, the police report of Sgt. Madden, dated September 1st, 2016, provides the following information:

(a) That the defendant called 911 at 5:38 a.m. and requested assistance because he feared for his safety.
(b) That the defendant called 911 at 7:30 a.m. and again requested assistance because he feared for his safety.
(c) That at no time after the above calls were made did the Garden City Police ever make contact with the defendant.
(d) That at 12:30 the defendant, fearing for his life and his safety, jumped from the window of his motel room, ran down the street in his socks and under-wear, asked for assistance from the victim, (who refused to assist the defendant by refusing to give him a ride away from his attackers), and, in a self-defense action, the defendant took the vehicle so he could get to safety.

3) All of this information is in the record of this case, in the pre-sentence report; in the police report of Sgt. Madden; in the victim's statement, and inasmuch, is clear from the record.

4) Under 19-202(A), the State Supreme Court has held, ". . . Evidence of some level of a reasonable fear of bodily harm is all that is required to assert self-defense." *State v. Hanson*, 133 Idaho 323, 986 P.2d 346 (1999).

5) The defendant did show that he had a reasonable fear of bodily harm, he called the police for assistance, not once but twice, and no one showed up!!

The acts charged are acts that were done in self-defense, and as such, the sentence imposed upon the defendant is illegally imposed in violation of 19-202(A).

Conclusion

Self-defense is an affirmative defense. One which must admittedly have had to occur before it can be ruled to be a justifiable action.

> Once a defendant shows that his acts were done in self-defense (by a preponderance of the evidence), then the burden shifts to the State of Idaho to prove "beyond a reasonable doubt" that the acts were not justified.
>
> The defendant met his burden of proof, and it was error for this court to impose a sentence upon the defendant when the State of Idaho did not meet their burden of proof that the acts charged were not done in self-defense.

(R., pp.121–25 (omissions and underline in original).) In light of this argument, Mr. Arrats requested that the district court "dismiss the criminal charges of robbery as self-defense," but "uphold the civil order of restitution." (R., p.126.) Mindful of the limitations of Rule 35(a) and (b) motions, Mr. Arrats maintains the district court abused its discretion by denying his motion.

CONCLUSION

Mr. Arrats respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests this Court vacate the district court's order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 2nd day of October, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of October, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas